

EXHIBIT N

NEW ENGLAND COMPOUNDING PHARMACY, INC. PRODUCTS LIABILITY
VIDEOTAPED DEPOSITION OF JOHN W. CULCLASURE, M.D. on 03/23/2015

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY,
INC. PRODUCTS LIABILITY MDL No. 2419
LITIGATION
Master Dkt:
1:13-md-02419-RWZ

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THIS DOCUMENT RELATES  
TO:

All Actions  
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VIDEOTAPED DEPOSITION OF
JOHN W. CULCLASURE, M.D.

9:05 a.m.
March 23, 2015

Suite 1100
315 Deaderick Street
Nashville, Tennessee

Blanche J. Dugas, RPR, CCR No. B-2290



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Pages 114..117

<p style="text-align: right;">Page 114</p> <p>1 representative from a company called NECC at the FASCA</p> <p>2 meeting that she attended.</p> <p>3 Q. At a what meeting?</p> <p>4 A. The Freestanding Ambulatory Surgery Center</p> <p>5 Association. I think that may not be exactly it, but</p> <p>6 something along those lines.</p> <p>7 Q. And?</p> <p>8 A. And so she asked if it was worthwhile to</p> <p>9 check with them and see if they could supply the</p> <p>10 medication. I said that would be fine. Check with</p> <p>11 them and see what they can do.</p> <p>12 Q. Anything else about that conversation?</p> <p>13 A. I don't know whether at that same time or</p> <p>14 later that day or the next day, she told me that she</p> <p>15 had seen them at that meeting for at least two years,</p> <p>16 maybe that was all. But they had been there -- she</p> <p>17 had seen them there exhibiting for a couple of times,</p> <p>18 that they supplied all kinds of medications including</p> <p>19 steroid. And she thought they might be an answer to</p> <p>20 our -- our threatened supply shortage.</p> <p>21 Q. Anything else you remember about -- up to</p> <p>22 this point in time, about speaking with anybody about</p> <p>23 this issue?</p> <p>24 A. I never spoke to anyone from NECC. The</p> <p>25 only people I discussed this with would have been</p>	<p style="text-align: right;">Page 116</p> <p>1 process.</p> <p>2 Q. Were you leaving it up to Debra Schamberg</p> <p>3 to decide where to purchase these steroids?</p> <p>4 A. She -- it was, I guess, more of a</p> <p>5 collaboration. She just asked me if I thought that</p> <p>6 was reasonable, and I said, Yeah that's very</p> <p>7 reasonable, that they -- it looks like they do</p> <p>8 everything correctly. They've got -- they follow, you</p> <p>9 know -- it looks like they maintain high standards,</p> <p>10 everything looks like it's state of the art. So I</p> <p>11 said, That's fine.</p> <p>12 Q. Was this in the hallway also?</p> <p>13 A. It could have been in her office. Probably</p> <p>14 in her office.</p> <p>15 Q. Now, did she ever let you know anything</p> <p>16 about price?</p> <p>17 A. I think -- you know, she may have mentioned</p> <p>18 some things about price. That just wasn't something</p> <p>19 that concerned me, so I didn't really -- I didn't care</p> <p>20 whether it was 50 cents more or less or a dollar more</p> <p>21 or less. That wasn't a large sum of money. I mean if</p> <p>22 we're talking about four or five hundred vials a</p> <p>23 month, a dollar a vial wasn't going to -- it wasn't a</p> <p>24 huge change in whether the center made money or not.</p> <p>25 Q. Well, what if it had been \$3 more? Would</p>
<p style="text-align: right;">Page 115</p> <p>1 staff, probably, as I said, Cindy or Sandy and then</p> <p>2 Debra.</p> <p>3 Q. Are the only people you would have talked</p> <p>4 with about this supply of steroids been Cindy, Sandy</p> <p>5 and Debra?</p> <p>6 A. Yes, sir.</p> <p>7 Q. It's true you never talked to anybody else</p> <p>8 about this situation at that point?</p> <p>9 A. I think to the best of my recollection</p> <p>10 that's true. It wasn't a -- it wasn't a crisis. It</p> <p>11 wasn't something that stood out dramatically. It was</p> <p>12 just something to deal with in the course of taking</p> <p>13 care of the patients.</p> <p>14 Q. Is there anything else about these</p> <p>15 conversations up to this point in time you haven't</p> <p>16 told us about yet? Anything?</p> <p>17 A. Well, somewhere in the sequence, Debra</p> <p>18 showed me some of the information from NECC. I don't</p> <p>19 know whether that was the first time I talked to her</p> <p>20 about it or when she told me that she thought about</p> <p>21 reaching out to them. But she did have some -- I</p> <p>22 don't remember whether it was a folder or whether it</p> <p>23 was a one-page -- I mean a one-sheet on back and</p> <p>24 front, but it just -- it was some advertising material</p> <p>25 from NECC. So I saw that at some point during the</p>	<p style="text-align: right;">Page 117</p> <p>1 that have made a difference to you?</p> <p>2 A. Well, I don't know what the cut-off point</p> <p>3 would have been. It wasn't -- that's not my issue.</p> <p>4 I'm not the -- I'm not managing the surgery center.</p> <p>5 Q. Well, do you know whether the patient would</p> <p>6 have had to pay more -- if the switch occurred in</p> <p>7 steroids, that a few dollars more were charged to the</p> <p>8 center; do you know that?</p> <p>9 A. That wouldn't change anything that the</p> <p>10 patient -- anything in the patient's bill. So no.</p> <p>11 Q. But what it would change is the profit of</p> <p>12 the center?</p> <p>13 A. Yes, it would.</p> <p>14 Q. And we've already established that the</p> <p>15 standard of care for a center is to never let profit</p> <p>16 take priority over patient safety; true?</p> <p>17 A. True. And it never did.</p> <p>18 Q. Are you telling us and the jury that money</p> <p>19 had nothing to do with this decision, Doctor?</p> <p>20 A. I said that profit did not affect the</p> <p>21 patient care.</p> <p>22 Q. Did money have anything to do with the</p> <p>23 decision to switch?</p> <p>24 A. Not with my decision, no.</p> <p>25 Q. Did it have anything to do with the</p>



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Pages 174..177

<p style="text-align: right;">Page 174</p> <p>1 care of STOPNC.</p> <p>2 Q. Did -- or when did you start referring</p> <p>3 those patients out?</p> <p>4 A. I don't remember exactly. One and a half</p> <p>5 to two years ago would be my best guess.</p> <p>6 Q. Would it have been after this catastrophe</p> <p>7 happened at STOPNC?</p> <p>8 A. I don't -- I don't remember the sequence of</p> <p>9 events.</p> <p>10 Q. Where would you obtain the medications used</p> <p>11 to fill the implanted pain pumps?</p> <p>12 A. That varied. And sometimes it depended on</p> <p>13 the insurance company. I think Blue Cross/Blue Shield</p> <p>14 of Tennessee designated a specific pharmacy --</p> <p>15 compounding pharmacy in Tennessee. Other patients we</p> <p>16 would use a different -- a different place. I don't</p> <p>17 remember all the different ones that we used over</p> <p>18 time.</p> <p>19 Q. Tell me the names of any of them that you</p> <p>20 used over time?</p> <p>21 A. I couldn't. I don't know.</p> <p>22 Q. Any of them out of state?</p> <p>23 A. I don't -- I just don't know. I didn't do</p> <p>24 the actual ordering. The nurse practitioner did. So</p> <p>25 I don't know the -- I just don't know the name of the</p>	<p style="text-align: right;">Page 176</p> <p>1 it includes any information about the patient. I</p> <p>2 think it's just numbering, the drugs and</p> <p>3 concentrations. So it's not actually like a</p> <p>4 prescription that we normally would give to a patient</p> <p>5 to take to a pharmacy.</p> <p>6 Q. Was the prescription for the absolute</p> <p>7 alcohol something that you would give to the patient</p> <p>8 to take to the pharmacy?</p> <p>9 A. No. We would probably -- probably have</p> <p>10 faxed it to the pharmacy or somebody would -- I would</p> <p>11 have had the secretary drop it by if they couldn't</p> <p>12 take it by fax. So the patient didn't pick up that</p> <p>13 drug. They -- we either then picked it up or they</p> <p>14 delivered it. I don't remember.</p> <p>15 Q. For the medications used to fill the</p> <p>16 implanted pain pumps, then, you're saying there may</p> <p>17 have been some form that was signed that would not be</p> <p>18 patient specific?</p> <p>19 A. I think that's correct. I haven't seen</p> <p>20 that form in a while, so I'd have look at it to</p> <p>21 refresh my memory.</p> <p>22 Q. Would you even sign any of those forms,</p> <p>23 because nurse practitioners are allowed to sign them,</p> <p>24 aren't they?</p> <p>25 A. I did at one time, but -- earlier in my</p>
<p style="text-align: right;">Page 175</p> <p>1 company.</p> <p>2 Q. Who was the nurse practitioner?</p> <p>3 A. There were several. Keri Weber, Allison --</p> <p>4 I'll think of her last name in a minute, but there</p> <p>5 were three or four that -- that did that for me.</p> <p>6 Q. Did they work at the Howell Allen Clinic</p> <p>7 there on the 8th floor?</p> <p>8 A. Yes.</p> <p>9 Q. Do they still work at the Howell Allen</p> <p>10 Clinic?</p> <p>11 A. No.</p> <p>12 Q. None of the four do?</p> <p>13 A. Correct.</p> <p>14 Q. Do you have something that you can look at</p> <p>15 to help refresh your memory of the names of those four</p> <p>16 people?</p> <p>17 A. Nothing handy.</p> <p>18 Q. But back at the office you think you have</p> <p>19 it?</p> <p>20 A. I wouldn't have a list of them.</p> <p>21 Q. For the medications used to fill the</p> <p>22 implanted pain pumps, were those patient-specific</p> <p>23 prescriptions?</p> <p>24 A. I think they were ordered on a different</p> <p>25 DEA form, and I don't know that they -- on that form</p>	<p style="text-align: right;">Page 177</p> <p>1 career when I was ordering them myself, I did fill</p> <p>2 that form out, but the nurses -- the nurse</p> <p>3 practitioners did do most of that afterwards, yes.</p> <p>4 Q. When you said earlier in your career, would</p> <p>5 that have been at the Howell Allen Clinic or somewhere</p> <p>6 else?</p> <p>7 A. No, somewhere else. Primarily when I was</p> <p>8 in North Carolina I know I did it myself then. And at</p> <p>9 times if somebody was on -- if the nurse practitioner</p> <p>10 was on vacation, if someone needed to be refilled</p> <p>11 early, then I would -- then I would have to order it.</p> <p>12 Q. So are you saying while you have been</p> <p>13 practicing medicine in Tennessee that you have written</p> <p>14 orders for medications used to fill implanted pain</p> <p>15 pumps that have been sent to compounding pharmacies</p> <p>16 that were not patient-specific prescriptions?</p> <p>17 A. I think that's the case. I'd have to see</p> <p>18 the form. It's been a long time since I filled a form</p> <p>19 out myself.</p> <p>20 Q. I'm talking about in Tennessee whether or</p> <p>21 not you have done that.</p> <p>22 A. Oh, I understand your question. I'm saying</p> <p>23 I just don't remember.</p> <p>24 Q. Was there any prescription written for the</p> <p>25 compounding products that were received from NECC?</p>



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Pages 178..181

<p style="text-align: right;">Page 178</p> <p>1 A. Not that I'm aware of, no.</p> <p>2 Q. You saw earlier that prescription order</p> <p>3 that had your name printed or written on it, but you</p> <p>4 said that was not your signature or you had not -- you</p> <p>5 did not write your name on that.</p> <p>6 A. Correct.</p> <p>7 Q. Is that not considered under Tennessee law</p> <p>8 a prescription order?</p> <p>9 A. I don't know.</p> <p>10 MR. GIDEON: Objection.</p> <p>11 Q. (By Mr. Clayton) You don't know?</p> <p>12 A. I don't know if that's considered a</p> <p>13 prescription or not, no.</p> <p>14 Q. And was that the only type of order that</p> <p>15 was used to obtain the products from NECC?</p> <p>16 A. I don't know.</p> <p>17 Q. Have you ever allowed anyone to sign your</p> <p>18 name to a prescription for a medication?</p> <p>19 A. No.</p> <p>20 Q. That would not be allowed, would it?</p> <p>21 A. No.</p> <p>22 Q. Did you review all of the brochures that</p> <p>23 Debra Schamberg gave you regarding NECC?</p> <p>24 A. If she gave them to me, I -- I would have</p> <p>25 looked at them, yes.</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Yes.</p> <p>2 Q. Did you go?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ever invoke the Fifth Amendment?</p> <p>5 A. Never.</p> <p>6 Q. With regard to the fentanyl abuse, how did</p> <p>7 you account for the missing fentanyl that you stole?</p> <p>8 A. Usually by saying that I gave two vials --</p> <p>9 two vials instead of one. So the patient always got</p> <p>10 an adequate amount. I just -- I just wrote on the</p> <p>11 record that I gave, you know, more as if the patient</p> <p>12 had a high tolerance. So the record would balance</p> <p>13 out, but...</p> <p>14 Q. So you would falsify patient records in</p> <p>15 order for you to cover up your fentanyl use?</p> <p>16 A. Yes.</p> <p>17 Q. And did you do that during both occasions</p> <p>18 whenever you were abusing the fentanyl?</p> <p>19 A. I don't remember -- I don't remember in</p> <p>20 Johnson City whether I had access to the records there</p> <p>21 or not. So I don't know, but definitely the first</p> <p>22 time in the Army, yes.</p> <p>23 Q. Well, if you didn't have access to the</p> <p>24 records in Johnson City, then how did you account for</p> <p>25 the missing fentanyl there?</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. Well, what is it that you recall she gave</p> <p>2 to you?</p> <p>3 A. I've seen some of the things -- some of the</p> <p>4 materials from NECC since that time. So I don't</p> <p>5 really -- it's a little bit hard to say what I saw at</p> <p>6 the time. I -- earlier today, I said I thought</p> <p>7 what -- one thing that I saw was a two -- a glossy</p> <p>8 two-sided sheet of paper with information on the</p> <p>9 processes that they use, the standards that they met.</p> <p>10 It could have also been a four-page foldout. I just</p> <p>11 don't remember.</p> <p>12 Q. Your ex-wife -- what was your ex-wife's</p> <p>13 name?</p> <p>14 A. Maiden name?</p> <p>15 Q. Her name, please.</p> <p>16 A. Elizabeth Penny, P-E-N-N-Y.</p> <p>17 Q. And where does she currently live?</p> <p>18 A. Chicago.</p> <p>19 Q. And when were the two of you divorced?</p> <p>20 A. Probably 1987.</p> <p>21 Q. And are your children a result of the</p> <p>22 marriage from her?</p> <p>23 A. Yes.</p> <p>24 Q. You were subpoenaed to give testimony to</p> <p>25 the grand jury in Boston?</p>	<p style="text-align: right;">Page 181</p> <p>1 A. Well, there was waste. And so if the nurse</p> <p>2 set the syringe down, I could pick up the syringe.</p> <p>3 Q. Any other way?</p> <p>4 A. No, sir, not that I remember.</p> <p>5 Q. You had sent an e-mail asking How -- asking</p> <p>6 if Howell Allen was going to pursue a claim on your</p> <p>7 behalf for lost wages. Do you remember sending that</p> <p>8 e-mail?</p> <p>9 A. Vaguely, yes.</p> <p>10 Q. Okay. Tell me the reasons why you sent</p> <p>11 that e-mail.</p> <p>12 A. I think someone told me that that was --</p> <p>13 that that was possible. And so I just asked if that</p> <p>14 was -- if that was part of the -- if that was the</p> <p>15 plan.</p> <p>16 Q. Who told you?</p> <p>17 A. I don't remember.</p> <p>18 Q. What were you told when you sent that</p> <p>19 e-mail?</p> <p>20 A. Probably there were -- it was possible to</p> <p>21 collect damages because of lost income.</p> <p>22 Q. I'm sorry, I did not hear what you --</p> <p>23 A. It was possible -- someone -- I guess</p> <p>24 someone told me it was possible to collect damages</p> <p>25 because of lost income and so I guess I was just</p>



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<p style="text-align: right;">Page 182</p> <p>1 inquiring if that was a possibility.</p> <p>2 Q. And what was the response that you</p> <p>3 received?</p> <p>4 A. I don't remember.</p> <p>5 Q. Well, you're aware that -- or are you aware</p> <p>6 whether or not Howell Allen has filed a claim in the</p> <p>7 bankruptcy for its losses?</p> <p>8 A. I'll not sure.</p> <p>9 Q. Or lost money?</p> <p>10 A. I don't know.</p> <p>11 Q. Is it --</p> <p>12 A. I'm not a partner so I don't attend</p> <p>13 business meetings and things like that. So I don't</p> <p>14 know what's been filed.</p> <p>15 Q. Whenever these other physicians from ASA</p> <p>16 would perform the ESIs at STOPNC, if I understand</p> <p>17 correctly, Howell Allen would not pay them directly;</p> <p>18 is that correct?</p> <p>19 A. Correct. They did their own billing.</p> <p>20 Q. Would you receive any sort of compensation</p> <p>21 for ESIs that were performed by the ASA folks at</p> <p>22 STOPNC?</p> <p>23 A. No.</p> <p>24 Q. Did you receive any type of separate</p> <p>25 compensation for being the medical director of STOPNC</p>	<p style="text-align: right;">Page 184</p> <p>1 fentanyl use, was there ever any -- or were there ever</p> <p>2 any criminal charges that were brought against you?</p> <p>3 A. No.</p> <p>4 Q. Were you ever threatened with any criminal</p> <p>5 charges?</p> <p>6 A. No.</p> <p>7 Q. Did you go straight from being a</p> <p>8 non-illegal drug user to starting to use fentanyl?</p> <p>9 A. Yes.</p> <p>10 Q. Had you abused any other drugs of any kind,</p> <p>11 whether they were prescription or illegal drugs, prior</p> <p>12 to using fentanyl?</p> <p>13 A. I smoked some marijuana in college.</p> <p>14 Q. Were any of the -- were you familiar with</p> <p>15 any of the other physicians' preference, whether they</p> <p>16 preferred using Depo-Medrol versus MPA over at STOPNC?</p> <p>17 A. A preference between Depo-Medrol over MPA?</p> <p>18 Q. Yes.</p> <p>19 A. No.</p> <p>20 Q. Or Depo-Medrol over a compounded</p> <p>21 pharmaceutical like the one that NECC provided.</p> <p>22 A. No.</p> <p>23 MR. CLAYTON: Short break.</p> <p>24 VIDEOGRAPHER: This is the end of</p> <p>25 Tape No. 3. We're off the record and the</p>
<p style="text-align: right;">Page 183</p> <p>1 other than the 60 percent that you would receive from</p> <p>2 Howell Allen for performing the ESIs?</p> <p>3 A. No.</p> <p>4 Q. So there was no separate stipend from</p> <p>5 anybody to be the medical director?</p> <p>6 A. Correct.</p> <p>7 Q. Do you personally know any compounding</p> <p>8 pharmacists who live in the Nashville area?</p> <p>9 A. Yes. First name, though. I don't</p> <p>10 remember -- his name is John.</p> <p>11 Q. That's a -- you don't know his last name?</p> <p>12 A. No.</p> <p>13 Q. Do you know the name of the company he</p> <p>14 works for?</p> <p>15 A. No.</p> <p>16 Q. How long have you known him?</p> <p>17 A. Three or four years.</p> <p>18 Q. You were aware back in 2011 and 2012 that</p> <p>19 there were compounding pharmacies in Tennessee;</p> <p>20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And compounding pharmacists in Tennessee;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. For the fentanyl -- you're -- for your</p>	<p style="text-align: right;">Page 185</p> <p>1 time is 3:25 p.m. I'm sorry. That was</p> <p>2 Tape No. 4.</p> <p>3 (A recess was taken.)</p> <p>4 VIDEOGRAPHER: Here begins Tape No. 5</p> <p>5 in the deposition of John Culclasure, M.D.</p> <p>6 We're back on the record and the time is</p> <p>7 3:31 p.m.</p> <p>8 Q. (By Mr. Clayton) Dr. Culclasure, have you</p> <p>9 ever attended any CMEs regarding being a medical</p> <p>10 director?</p> <p>11 A. No.</p> <p>12 Q. Have you ever had any training to be a</p> <p>13 medical director?</p> <p>14 A. No.</p> <p>15 Q. So while you were in your treatment program</p> <p>16 in Nashville, the folks who ultimately formed the</p> <p>17 Howell Allen Clinic, one of the people there came to</p> <p>18 you and asked you to be a medical director --</p> <p>19 MR. GIDEON: Objection.</p> <p>20 Q. (By Mr. Clayton) -- of the pain clinic?</p> <p>21 A. He called me and then asked me to come --</p> <p>22 if I could come interview. So I -- yes. So that's</p> <p>23 how that happened.</p> <p>24 Q. Is it your position as the medical director</p> <p>25 of STOPNC that STOPNC obtained the MPA from New</p>



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